

Terms and Conditions

As of March 2023

§1 – Validity

1. The following terms and conditions of Sale and Delivery shall apply to all contracts, deliveries and other services of Kempf GmbH (hereinafter: „Kempf“) in the legal relationship with its contractual partners (hereinafter: „Customer“), unless otherwise expressly agreed in individual cases.

The Customer’s general terms and conditions of business and purchase shall not apply even if Kempf does not expressly object to their application. This shall also apply in the event of a reference to letters of the customer with which the customer requests the inclusion of its own general terms and conditions of contract.

2. These terms and conditions shall also apply to all future contracts, deliveries and services, even if the text is not sent to the customer again in the offer or order confirmation.

§2 – Offer and conclusion

1. Offers made by Kempf are subject to confirmation. Contracts and other agreements shall only become binding upon confirmation of the order or performance by Kempf.

2. At least text form in accordance with §126b of the German Civil Code („BGB“) is required for the conclusion of the contract to be effective. The same applies to changes to the original contractual agreements.

§3 – Price and payment

1. All prices are valid for delivery ex works („ex works Rohrbach“ incoterms 2023) including domestic packaging. The statutory value added tax applicable at the time shall be added, unless the agreed deliveries and services are exempt from value added tax.

2. Invoices for payment shall be paid within 14 days of receipt of the invoice without deduction, unless otherwise agreed or a longer payment period is granted in the order confirmation.

3. They are valid as approved if the customer does not contradict within 30 days after access of the calculation in writing within 30 days after receipt of the invoice.

4. Offsetting with counterclaims disputed by Kempf and not legally established is excluded.

The assertion of a right of retention due to claims that are not based on the same contractual relationship is precluded if these claims are not acknowledged by Kempf or have not been legally established.

§4 – Shipment and transfer of risk, insurance, disposal

1. For the transfer of risk, „ex works Rohrbach“ (incoterms 2010) is agreed; if this provision is incomplete, §§ 446 and 447 BGB shall apply in addition. No deviating agreement on the passing of risk may be derived from the assumption of an assembly obligation.

2. In the absence of shipping instructions from the customer, the goods shall be shipped at the customer's discretion without any obligation to use the cheapest or fastest method of shipment. At the customer's request and expense, Kempf will insure the subject matter of the contract against desired and insurable risks, in particular against theft or transport damage.
3. If shipment is delayed at the customer's request or for reasons for which the customer is responsible, the goods shall be stored at the customer's expense and risk.
4. Insofar as Kempf is obliged for legal reasons to take back packaging or products after their exhaustive use, the customer shall bear the associated costs.
5. The customer undertakes to properly dispose of delivered products at its own expense after termination of use in accordance with the statutory provisions. He shall indemnify Kempf from the obligation to take back the products as a manufacturer pursuant to § 10 para. 2 ElektroG and from all obligations in connection therewith.

§5 – Delivery periods, purchase on call, delay, impossibility of the delivery

1. Delivery periods and dates shall only be deemed binding if this has been contractually agreed.
2. A delivery period determined only in terms of duration shall commence at the end of the day on which the contract is concluded and thus at the earliest upon receipt of the order confirmation. The time limit shall be extended by the same period of time by which the customer is in arrears with a statutory or contractual cooperation act.
3. Delays in delivery due to force majeure or due to circumstances beyond Kempf's control shall extend the agreed delivery periods for the duration of the hindrance.
4. Insofar as reasonable batch sizes (benchmark: production volume and order volume) are achieved, Kempf shall be entitled to effect partial performance and the customer shall be entitled to demand partial performance. Any additional costs incurred as a result thereof shall be borne by the contracting party initiating the partial performance.
5. Orders on call shall only be accepted with acceptance deadlines. If the acceptance period is not specified precisely, it shall end 12 months after conclusion of the contract. The goods shall be accepted in approximately equal monthly quantities. If acceptance does not take place within the agreed period, we shall be free to deliver completed deliveries without further notice or to store them at the expense of the customer.
6. In addition, we shall be entitled to set our customer a grace period for acceptance, combined with the threat that we will refuse acceptance of the goods if the grace period expires fruitlessly. If the period of grace then expires fruitlessly, we shall be entitled to withdraw from the contract in whole or in part by terminating our delivery obligation or to claim damages for non-performance by rejecting the delivery.

§6 – Default of acceptance by our contractual partner

1. If the customer is in default of acceptance of the services of Kempf in whole or in part, Kempf shall be entitled, after fruitless expiry of a reasonable grace period set in advance, to store the subject matter of the contract for the account of the customer or to have it stored; the

contractually agreed remuneration shall become due at the latest upon expiry of the grace period. The statutory rights in the event of default of acceptance by the customer shall remain unaffected.

2. The customer shall reimburse Kempf for storage costs, storage rent and insurance costs incurred by Kempf for goods due for acceptance but not accepted. However, there is no obligation on our part to insure stored goods. Kempf may determine and demand advances at its reasonable discretion.

§7 – Fault and guarantee

1. The customer shall immediately notify Kempf in writing of any complaints. In such cases, the customer may only withhold payments if there is no doubt as to the justification of the complaint. The extent must be in reasonable proportion to the material defect.

2. In the event of defects covered by warranty within the limitation period of 2 years, Kempf shall, at its discretion, either remedy the defect or provide a new service. In the event of subsequent improvement, subsequent performance shall only be deemed to have failed if subsequent improvement has been attempted three times without success.

§8 – Quality of goods, excess and shortfall in performance

1. Samples and specimens shall be considered as approximate illustrative pieces for quality, dimensions and other properties. Information on dimensions and properties of the products serve as a description and do not constitute an agreement on quality in the event of minor deviations if the product is suitable for the purpose agreed or assumed under the contract.

2. In the event of technical necessity, Kempf reserves the right to deliver the ordered goods with deviations in quality, dimensions and other properties, provided that this does not impair the usability of the delivered items.

3. Kempf reserves the right to make a 5% excess or short delivery in deviation from the order quantity (100%) in the case of series and mass-produced items, such as baking trays. To the extent of the quantity deviation, the contract volume and the contractually agreed remuneration shall increase or decrease.

§9 – Liability

1. Without prejudice to the statutory liability in the event of injury to life, body and health as well as essential contractual obligations, Kempf shall only be liable for other damage to the rights and legal assets of the customer and other persons in its care in the event of intentional or grossly negligent causation.

2. In the event of liability on the part of Kempf on the merits, this liability shall be limited to those damages that could have been foreseen as a possible consequence of a breach of contract at the time the contract was concluded or that should have been foreseen under the known circumstances. Consequential damage resulting from defects in the subject matter of the contract shall only be eligible for compensation to the extent that it is to be expected in the event of use in accordance with the intended purpose.

3. Insofar as Kempf is liable for damage to property and personal injury in the event of simple negligence, this liability shall be limited to an amount of EUR 1,000,000 per claim.
4. We shall be liable for any further claims exclusively in accordance with the statutory provisions; this shall apply in particular to the provisions under the Product Liability Act.

§10 – Retention of title

1. Delivered goods remain the property of Kempf until all existing claims against the customer have been fulfilled. Until then, the customer is not entitled to pledge the items to third parties or to assign them as security. In the case of payments made against the sending of a bill of exchange issued by Kempf and accepted by the customer, the claims shall only be deemed to have been fulfilled when the bill of exchange has been honored by the drawee and Kempf has been released from the liability for the bill of exchange. Insofar as the customer becomes the owner of the items subject to Kempf's retention of title by processing or mixing them, the customer hereby assigns to Kempf the ownership of the resulting items as security for the aforementioned claims, with the simultaneous agreement that the customer shall hold them in safe custody for Kempf. Resale shall only be permitted to resellers in the ordinary course of business and only on condition that the customer as reseller receives immediate payment from its customers or makes the reservation that ownership shall not pass to the customer until the customer has paid the price in full, to this extent Kempf gives its consent to the transfer of its ownership to the third party. In the event of resale, the customer assigns its future purchase price claim to Kempf by way of security already upon conclusion of the transaction, without any special declaration being required. Until revoked, the customer is authorized to collect the newly created purchase price claim. Any costs of collection and intervention shall be borne by the ordering party.
2. If the value of the securities exceeds Kempf's claim by more than 20%, Kempf shall, at its option, release a corresponding part of the securities at the customer's request.

§11 – Ownership of documents, confidentiality

1. Illustrations, drawings, calculations, samples and models remain Kempf's property. The customer undertakes not to make such items accessible to third parties in any form without express permission. For each case of culpable infringement of the aforementioned obligations, the customer promises to pay a contractual penalty to Kempf in the amount of EUR 10,000.00 in each individual case.
2. The contracting parties mutually undertake to treat all commercial and technical details of which they become aware as a result of the cooperation and which are not in the public domain as their own business secrets and to maintain absolute confidentiality with respect to third parties. For each case of culpable infringement of the aforementioned obligations, the contracting parties promise to pay each other a contractual penalty in the amount of 10,000 euros in each individual case.

§12 – Industrial property rights

If the goods are to be manufactured according to drawings, samples or other specifications of the customer, the customer shall be responsible for ensuring that no rights of third parties, in particular patents, utility models or other industrial property rights and copyrights are infringed thereby. The customer shall indemnify Kempf against claims of third parties arising from any infringement of such rights. In addition, the customer shall reimburse Kempf for all costs incurred by Kempf as a result of third parties asserting the infringement of such rights and Kempf defending itself against such a claim.

§13 – Place of jurisdiction

1. the invalidity of individual contractual clauses shall not affect the validity of the remainder of the contract. If there are gaps in the contract or if such gaps arise due to the invalidity of individual clauses of the contract, the parties shall agree on a mutually acceptable provision which best corresponds to the purpose of the contract and which comes as close as possible to any invalid clause. If such a regulation is not reached within a reasonable period of time, Kempf shall be entitled to determine the performance itself at its reasonable discretion in accordance with § 315 BGB.
2. The contractual relationship shall be governed by German substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
3. The place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be Ingolstadt.